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February 29, 2000

HAND DELIVERY

Surface Transportation Board
Office of the Secretary
Case Control Unit
Attn: STB Ex Parte No. 582
1925 K Street, N.W.
Washington, DC 20423-0001

Re: Ex Parte No. 582, Public Views on Major Rail <u>Consolidations</u>

Dear Ladies/Gentlemen:

Enclosed please find an original and 10 copies of the Summary of Comments on Behalf of the Port Authority of New York and New Jersey to be filed in the above-captioned proceeding. In addition, please find a 3.5-inch IBM-compatible floppy diskette convertible into 7.0 WordPerfect of the same document.

Very truly yours,

Paul M. Donovan

Paul M. Donovan

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Office of the Secretary
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Part of
Public Record

EX PARTE NO. 582

PUBLIC VIEWS ON MAJOR RAIL CONSOLIDATIONS

SUMMARY OF COMMENTS ON BEHALF OF THE
PORT AUTHORITY OF NEW YORK AND NEW JERSEY

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Attorneys for The Port Authority
Of New York and New Jersey

DATED: February 29, 2000

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB EX PARTE NO. 582

PUBLIC VIEWS ON MAJOR RAIL CONSOLIDATIONS

SUMMARY OF COMMENTS ON BEHALF OF THE
PORT AUTHORITY OF NEW YORK AND NEW JERSEY

In 1968, the Interstate Commerce Commission approved the ill-fated merger of the Pennsylvania Railroad and the New York Central Railroad. This consolidation was initially viewed as a remedy for the dire financial condition the railroads were in, and an opportunity to make operations more efficient. It was a false hope. The Penn Central bankruptcy that followed the merger led the way to a virtual collapse of rail service in the Northeast and Midwest.

Certainly, the approval of the Penn Central merger did not create the problems that led to the bankruptcy of the eastern rail carriers, but the timing of the approval certainly exacerbated those problems, and hastened the ultimate failure of the rail system.

After many years and the infusion of substantial Federal monies, Conrail became a strong railroad largely able to meet the needs of shippers and receivers located in its service territory and beyond. Among those benefiting from the emergence of Conrail was the New York, New Jersey Port District area, represented by the Port Authority of New York and New Jersey ("the Port Authority").[1]

In the dark days following the Penn Central merger, the Port Authority witnessed a steady decline in export/import traffic moving through the Port of New York and New Jersey by rail. In fact, before the revitalized Conrail became a strong competitive force, the Port's rail traffic nearly disappeared.

By virtue of the cooperative efforts of the Port Authority and Conrail, that pattern reversed in the early part of the last decade, and we saw a remarkable increase in rail movements through the Port. Conrail's service and the on-dock terminal rail facilities offered by the Port Authority combined to present a formidable competitive alternative to other ports, other transport modes, particularly trucks, and other rail carriers serving other ports.

When CSX and Norfolk Southern sought to acquire Conrail, the Port Authority expressed grave reservations to this Board. We were

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1 The Port Authority is an agency of the States of New York and New Jersey and is charged, among other things, to protect the commerce of the Port District, an area approximately 25 miles from the Statue of Liberty.

concerned that the rail infrastructure of a rationalized Conrail would not be sufficient to provide adequate service to the New York New Jersey region or to the Port itself. We were further concerned that the substantial premium paid for Conrail would so deplete the capital accounts of the acquiring rail carriers that they would be unable to make the necessary capital contributions to provide for the additional infrastructure that would so obviously be needed.

Our fears have been realized. Notwithstanding the combined efforts of the Port Authority, CSX and Norfolk Southern in regular monthly meetings, and we do not for a moment underestimate the value of those combined efforts, service at New York/New Jersey deteriorated dramatically following the split-up of Conrail. Some traffic that had been moving through the Port has been diverted to other ports, and for the first time in a decade, there has been a reversal in the continuing upward trend in rail market share at the Port of New York and New Jersey.

The situation that we describe at New York and New Jersey is hardly news to this Board. In Finance Docket 33388 (Sub-No. 91) the Board has begun active oversight of the aftermath of the Conrail split and the service problems resulting therefrom.

While the situation in the East has not yet resulted in the melt-down experienced in the West following the Union Pacific-Southern Pacific merger, it promises to be longer lasting due to the carriers' lack of financial resources with which to provide critical infrastructure improvements. The capital situation of the eastern carriers is reflected in their stock prices, and other financial indicators. It is not a pretty picture.

Further complicating the eastern carriers situation is the newly announced BNSF/CN proposed merger. As the Board correctly points out, this proposal will likely result in a barrage of new combinations and quite possibly a rail structure in North America that is vastly different from what we now have. It is the Port Authority's belief that now is not the time for further consolidations. Now is the time to improve existing service and correct those deficiencies that are the result of the extensive consolidations that have only so recently occurred.

The very fact that the public's views have been solicited by the Board is evidence not only of the Board's concern but of the public interest in future rail consolidations. The Port Authority strongly believes that the Board should take whatever actions it deems appropriate to defer any additional mergers, including the BNSF/CN proposal until such time as the carriers are financially strong enough to undertake any such consolidations without suffering the service deteriorations that we have seen in the recent past. As the Board has already made clear, it is no answer to suggest that the BNSF/CN merger should be judged in a vacuum, without regard to the ultimate consequences of approval of such a combination.

At this time the public interest must be viewed as superior to the private interests of various of the carriers and even of their stockholders. We suggest that there be no more mergers until the carriers are strong enough to consolidate without damaging the public interest!

Respectfully submitted,

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